



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

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OFFICE OF
ECOSYSTEMS,
TRIBAL AND PUBLIC
AFFAIRS

November 20, 2013

Forrest Cole, Forest Supervisor
Tongass National Forest
648 Mission Street
Federal Building
Ketchikan, Alaska 99901-6591

Re: Greens Creek Mine Tailings Expansion Final Environmental Impact Statement and Record of Decision. EPA Project Number: 01-012-AFS.

Dear Mr. Cole:

The U.S. Environmental Protection Agency has reviewed the U.S. Forest Service's final Environmental Impact Statement for the proposed tailings facility expansion at the Greens Creek Mine. Our review was conducted in accordance with our responsibilities under the National Environmental Policy Act and Section 309 of the Clean Air Act. The EPA is serving as a cooperating agency on the development of the EIS for this project.

The final EIS evaluates the proposed action and alternatives to modify the existing plan of operations to accommodate additional tailings at the mine. The USFS selected "Alternative D modified" in the ROD. This alternative will allow additional tailings capacity equivalent to 10 years of production, rather than the 30 – 50 year production presented as the Proposed Action in the draft EIS. The smaller expansion is expected to significantly reduce adverse impacts to natural resources. For example, 77 – 121 acres of previously expected wetland impacts will be reduced to 14 acres, and the expansion will avoid the Admiralty Island National Monument.

In our July 24, 2012 comment letter on the draft EIS, the EPA raised concerns regarding the lack of financial assurance for long-term water treatment, the uncertainties related to geochemical modeling, lack of analysis for long term impacts, and concerns about impacts to waters of the United States. These issues formed the basis of an adverse rating on the draft EIS, per the EPA's Policy and Procedures. During the last year and a half, our agencies have engaged in many discussions to resolve these concerns. Our primary area of focus has been financial assurance for long-term water treatment.

Financial Assurance

Throughout our discussions, it has been apparent that the USFS and the EPA agree that adequate financial assurance for mining operations is important to safeguard the environment and prevent future clean-up liability. We appreciate the significant efforts made by you and the USFS staff to constructively engage the EPA throughout the NEPA review process. Although the final EIS does not explicitly satisfy our recommendation to disclose pertinent financial assurance cost information in the EIS, we are encouraged by our ongoing interaction and commitments to future interaction (established at our meeting in October 2013 and captured in your letter dated November 15, 2013). Our expectation is

that we will continue to engage in a meaningful process that will include the EPA's review of key information (outlined in the EPA's draft EIS comment letter) and that the Forest Service will consider our input before making a final decision.

Geochemical Analysis

The EPA and the USFS have discussed the EPA's concerns regarding geochemical modeling, including the lack of sensitivity and uncertainty analyses and the representativeness of samples used to characterize the tailings facility. We understand that additional analysis on the modeling and sampling will not be conducted at this time. Although we acknowledge that additional monitoring and sampling would not affect the determination that long term water treatment is required, possible inaccuracies in the predictions could affect the cost of water treatment over time. Therefore, we believe that monitoring, regularly scheduled reviews of financial assurance (per the Forest Service Manual 6500), and financial assurance "true ups" will be important to address these issues.

Additional Analysis of Long Term Impacts

Given the current lack of financial assurance for long-term water treatment, the EPA requested that the NEPA analysis include a discussion of potential impacts to environmental resources in the event that water treatment should cease. Without the assurance of committed resources for adequate mitigation¹ the analysis should consider the environmental effects of the project absent those measures. We are pleased to note that the final EIS includes an additional section and information on risk exposure.

Impacts to Waters of the U.S.

We previously raised concerns about impacts to aquatic resources, including wetlands, from the expanded tailings facility, both in response to the draft EIS and in response to the Corps of Engineers' Public Notice. The reduced scope of the project will result in a significant reduction of impacted wetland acres. It also avoids filling a high value fish-bearing portion of Tributary Creek. The EPA recognizes that it is the Corps' responsibility to ensure that the final Clean Water Act Section 404 permit complies with the Section 404(b)(1) Guidelines. However, to the extent that the Greens Creek EIS may serve as NEPA compliance for the Corps, we recommended that the final EIS contain information relevant to complying with the Guidelines. We appreciate the inclusion of the Corps's Response to Comments on their public notice in the final EIS. It is our understanding that the Corps will conduct the 404(b)(1) analysis after the final EIS and ROD are complete. Since there is not yet an opportunity to review the 404(b)(1) analysis, we remained concerned about potential impacts to waters of the United States.

We support the decision in the ROD to approve the scaled down expansion and agree with the USFS that the 10 year approval will allow time to gather and analyze additional information and to thoroughly consider all feasible options to provide additional tailings disposal capacity through future NEPA processes.² We do not yet know whether the geographic and temporal scope of the Corps' 404(b)(1) analysis will be for the scaled down project or the larger proposal. We would encourage the Corps to align their process with the capacity approved in the ROD while considering additional information for future tailings placement in waters of the United States. This will support the current project while allowing potential relevant information to inform the Least Environmentally Damaging Practicable

¹ CEQ Guidance "Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significance" states the importance of assuring that resources are available to follow through on mitigation commitments in the EIS.

² USFS ROD Summary, page 9 and Conclusion, page 14.

Alternative determination for future foreseeable actions. We recommend that future NEPA processes include relevant information in the Corps' permit.

Thank you for considering our comments on the final EIS. We look forward to continuing to work with you in the review of the financial assurance information. We also request that the EPA be informed of any subsequent NEPA analysis that may develop in response to additional proposed expansions.

If you have any questions or comments, please contact me at (206) 553-2581 or by electronic mail at allnutt.david@epa.gov or you may contact Lynne Hood of my staff at (208) 378-5757 or by electronic mail at hood.lynne@epa.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read 'R. David Allnutt', with a stylized flourish at the end.

R. David Allnutt, Director
Office of Ecosystems, Tribal and Public Affairs